

S.B.Civil Sales Tax Revision No.1276/02
C.T.O., Jodhpur v. M/s Kohinoor Industries, Jodhpur

Date of Order : 03.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.
Mr. Dinesh Mehta for the non-petitioner.

Heard learned counsel for the parties.

Short question of law involved in this appeal is that whether the Deputy Commissioner (Appeals) has committed error of law in setting aside the order of imposition of the penalty and levy of interest on the tax amount despite the fact that the tax was imposed by the Assessing Authority after discarding the C-forms.

Brief facts of the case are that the petitioner's tax was assessed for the year 1987-88 on 5.6.1990. The Assessing Authority was of the view that some amount of tax escaped therefore, again notice was issued to the assessee with the ground that the C-forms produced by the assessee were forged and fake and, therefore, the assessee is liable to pay the tax amount and since the assessee has deliberately did not pay the tax and, therefore, is liable to pay the interest and penalty also. The order of the Assessing Authority dated 29.1.1997 was challenged by preferring appeal by the

assessee which was allowed by the Deputy Commissioner (Appeals) vide order dated 23.2.1998. It will be worthwhile to mention here that so far as finding of the Assessing Authority that the C-Forms were forged and fake, that was upheld by the Deputy Commissioner (Appeals) and, therefore, the liability of assessee to pay the tax was maintained by the Deputy Commissioner (Appeals). The Deputy Commissioner (Appeals) was of the view that the act of the assessee cannot be termed to be an deliberate act with intention to conceal the payment of tax, therefore, the Deputy Commissioner (Appeals) set aside the levy of interest and imposition of penalty over the tax amount.

The revenue preferred appeal before the Tax Board which was dismissed by the Tax Board vide order dated 13.8.2001.

The learned counsel for the revenue submitted that when it has been found by the Assessing Authority as well as by the Deputy Commissioner (Appeals) that the relevant C-Forms were forged and the assessee was held liable to pay tax then since tax has not been paid in due time then the liability to pay tax with interest is statutory liability and the Deputy Commissioner (Appeals) could not have set aside the imposition of penalty as well as interest over the due amount. The learned counsel for the revenue also

submitted that the Deputy Commissioner(Appeals) relied upon the judgment of the Hon'ble Supreme Court delivered in the case of M/s India Carbon Limited vs. the State (1997 (106) STC 460), but according to the learned counsel for the petitioner, said view is no good law in view of the subsequent amendment in the CST Act.

The learned counsel for the non-petitioner submitted that so far as whether there was intention of the assessee to conceal the facts in the return or there was intention or deliberate act of the assessee to avoid the tax , the finding of fact has been recorded by the Deputy Commissioner (Appeals) as well as the Tax Board in favour of the assessee, therefore, the Deputy Commissioner (Appeals) as well as the Tax Board were right in setting aside the levy of interest and the penalty on the tax amount.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

Substantially the facts are not in dispute and now it cannot be disputed that the C-forms which were used were not genuine C-Forms. There is substance in the contention of the learned counsel for the non-petitioner that he bonafidely believed that the C-Forms were genuine and, therefore, the penalty cannot be imposed without further proof of deliberate act of the assessee to

show that he obtained and used these forged C-Forms knowing them to be forged one. Therefore, so far as the amount of penalty is concerned, there is justification for not imposing the penalty over the tax amount but so far as interest is concerned, it is admitted case that the tax was not paid in time and, therefore, the assessee-petitioner is liable to pay interest.

Therefore, the revision petition is partly allowed. The order of the Tax Board dated 13.8.2001 and the Deputy Commissioner (Appeals) dated 23.2.1998 are set aside so far as by which it set aside the amount of interest is concerned. Therefore, it is held that the assessee shall be liable to pay the tax and interest amount but the assessee shall not be liable to pay penalty on the tax amount.

(PRAKASH TATIA),J.

mlt.